

NOTICE OF PROPOSED RULEMAKING

AMENDMENT TO TITLE 22. CALIFORNIA CODE OF REGULATIONS REGARDING AREA PLANS – ALLOCATION, USE AND TRANSFER OF FEDERAL FUNDS

DIVISION 1.8. CALIFORNIA DEPARTMENT OF AGING

The California Department of Aging (Department) proposes to adopt the regulatory action described in the Informative Digest after considering all comments, objections or recommendations regarding the proposed action.

HEARING

Any person interested may present statements or arguments orally or in writing relevant to the proposed regulation at a public hearing to be held on Tuesday January 30, 2007, as follows:

DATE – January 30, 2007
California Department of Aging
1300 National Drive, Suite 200
Sacramento, California

The public hearing will convene at 10:00a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

WRITTEN COMMENT PERIOD

Any interested party may submit written comments on the proposed action. The written comment period closes at 5:00 p.m. on January 30, 2007. Comments must be received by that time at the California Department of Aging, Office of Legal Services, 1300 National Drive, Suite 200, Sacramento, California 95834.

The Department, upon its own motion or at the instance of any interested party, may adopt the proposal substantially as described or may modify the proposal if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify at the hearing, or who submit written comments during the public comment period, or who request notification of any changes to the proposal. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulation and the Initial Statement of Reasons are available from the office listed below. This Notice, the Initial Statement of Reasons, and the text of the proposed regulation are available on the internet at <http://www.aging.ca.gov>. Additionally, all the information that the Department considered as the basis for the proposed regulation (i.e. rulemaking file) is available for public review at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT: California Department of Aging
Long-Term Care and Aging Services Division
1300 National Drive, Suite 200
Sacramento, California 95834
Johnna Meyer
TELEPHONE: (916) 419-7557 FACSIMILE: (916) 928-2509
E-MAIL: jmeyer@aging.ca.gov

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This regulation interprets and makes specific Sections 3025(a)(2)(C), 3028, 3030a, 3030s-1, and 3058a of Title 42 of the United States Code and Sections 9100, 9112, and 9719.5 of the Welfare and Institutions Code regarding the allocation, use, and transfer of federal funds to the area agencies on aging (AAA).

The Department is responsible for setting consistent statewide policy for the prudent use of Older Americans Act (OAA) program funds. The broad objective of this proposal is to ensure that funds allocated to AAAs for OAA services are spent in a timely and efficient manner for purposes intended by Congress and as required by federal law. The proposal will remove a potential incentive for AAAs to hold on to funds during one fiscal year to build up cash reserves for future fiscal years for uses other than direct services.

Pursuant to federal law, the Department, in consultation with the AAAs, developed the Intrastate Funding Formula (IFF) for the allocation of federal and state funds to the AAA for programs provided under Title III of the federal OAA. The Department uses the IFF identified in Section 9112 of the Welfare and Institutions Code to allocate funds for most Title III Older Americans Act programs. The Department uses the formula identified in Section 9719.5 of the Welfare and Institutions Code to allocate funds to the AAAs for the Ombudsman Program under Titles III B and VII of the OAA. These funds are allocated to the AAAs in an annual contract that terminates on June 30 of each fiscal year.

Allocation of Unexpended Funds

Ongoing OAA Programs. This proposal will dictate how the Department will re-allocate federal funds that have been allocated to an AAA in a state fiscal year contract, but have not been spent or encumbered by the AAA on services provided by June 30 of the same fiscal year. The regulation will require those funds to revert back to the Department to be re-allocated separately from baseline funds to all AAAs in accordance with the formula used for the original allocation. The regulation will limit the use of the re-allocated funds to specified purposes.

New OAA Programs. The proposal provides an exception to the general rule requiring the Department's use of the formula in circumstances where the funds are re-allocated to AAAs for new OAA programs. The proposed regulation will authorize the Department to re-allocate unexpended and unencumbered funds back to an AAA in a subsequent fiscal year for limited purposes only. The exception will only be available for the first four years following the enactment of the program. The purpose of this exception is to allow the AAA sufficient time and resources to successfully implement the new program.

Allocation of Audit Funds

Current regulations do not specify a method for allocating Title III and VII funds, which have been recovered from an AAA as a result of a fiscal audit determination and resolution. The proposed regulation will specify that these funds shall be re-allocated in accordance with the formula used for the original allocation. The re-allocated funds shall not be used to increase an AAA baseline allocation and shall be used for specified purposes only.

Allocation of Supplemental Federal Funds

The Administration on Aging often provides supplemental funds to the Department as part of its federal reallocation process. Current regulations do not specify the method of allocation of these supplemental Title III and Title VII program funds. The proposed regulation will specify that these funds will be allocated in accordance with Section 9112 or Section 9719.5 of the Welfare and Institutions Code. Supplemental funds, which are not expended or encumbered by June 30 of the same fiscal year, shall revert back to the Department and be re-allocated to all AAAs in accordance with the formula used for the original allocation. The re-allocated funds shall not be used to increase an AAA baseline allocation and shall be used for specified purposes only.

Use of Federal Funds

Current regulations do not specify the allowable purposes for which AAAs can use unexpended or unencumbered Title III and Title VII baseline and supplemental funds, or funds recovered from an AAA as a result of a fiscal audit determination and resolution. The proposed regulation will formally adopt the Department's long-standing practice of restricting the use of these funds to the following: 1) purchase of equipment which enhances the delivery of services to the eligible services population; 2) home and community-based projects, which are approved in advance by the Department, and are designed to address the unmet needs of eligible service population identified in the area plan and 3) innovative pilot projects, which are approved in advance by the Department, and are designed for the development or enhancement of a comprehensive and coordinated system of services.

LOCAL MANDATE STATEMENT

This proposed regulation imposes a mandate on local agencies but not on school districts. If the Commission on State Mandates determines that these regulations contain reimbursable costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to Government Code, Section 17500.

FISCAL IMPACT

1. Costs or Savings to State Agencies: None.
2. Cost to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The Department has determined that there is no impact on small businesses as a result of filing this regulation because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

No alternative considered by the Department would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons.

AUTHORITY AND REFERENCE CITATIONS

The Department adopts this regulation under the authority granted in Section 9105 of the Welfare and Institutions Code. Subject regulations implement and make specific 42 U.S.C. 3025(a)(2)(C), 42 U.S.C. 3028, 42 U.S.C. 3030a, 42 U.S.C. 3030s-1, 42 U.S.C. 3058a, and Welfare and Institutions Code Sections 9100, 9112 and 9719.5.

REPRESENTATIVE REGARDING RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person	Johnna Meyer	(916) 419-7557
Backup:	Geri Baucom	(916) 928-2723